

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ANDRES GARCIA,

Plaintiff,

vs.

No. 1:08-cv-00279-PJK-WDS

GARY TAFOYA, PETE CAMACHO,
STEVE BARELA, WILL PRATER,
KELLEY JO PARKER, GERARD
HYATT, FNU LNU, RICHARD VON
ANCKEN, JACQUIE MONCLOVA,
SUE CLEVELAND, MARINA
ESTRADA, ALEX BOLDEN, JOHN
DOE 1, JOHN DOE 2, JOHN DOE 3,
JOHN DOE 4, and JOHN DOE 5 in their
individual capacities, and the CITY OF
RIO RANCHO, CHILDREN YOUTH
AND FAMILIES DEPARTMENT,
JUVENILE PROBATION
DEPARTMENT, BOARD OF
EDUCATION OF RIO RANCHO
SCHOOL DISTRICT, RIO RANCHO
SCHOOL DISTRICT, BOARD OF
COUNTY COMMISSIONERS OF
BERNALILLO COUNTY,

Defendants.

ORDER

THIS MATTER comes on for consideration of Plaintiff's Sealed Unopposed
Motion To Extend Pre-trial Deadlines, Or In The Alternative Permit Depositions Out of
Time, And For Reconsideration Of Defendants' Motion To Extend Pretrial Deadlines

And To Vacate Settlement Conference and Request For Hearing filed June 10, 2010.

Doc. 201. Upon consideration thereof, the motion is denied. A hearing is not necessary.

A brief history is in order. On August 27, 2008, the magistrate judge set the following deadlines: discovery, February 23, 2009; discovery motions, March 5, 2009; other pretrial motions, April 13, 2009. Doc. 58 at 1-2. Those deadlines were extended by one month on January 16, 2009, resulting in a discovery deadline of March 23, 2009. Doc. 76 at 1-2. Not until February 24, 2009 was discovery stayed so as to consider qualified immunity motions. Doc. 100. The stay was lifted on November 5, 2009. Doc. 169 at 9. On January 6, 2010 the magistrate judge set the discovery deadline of June 7, 2010. Doc. 182 at 1. One day after this latest discovery period expired, Defendants filed a motion seeking a two-month extension of various pretrial deadlines including discovery. Doc. 198 at 2. The court denied that request because it failed to meet the “good cause” standard for reopening discovery and extending other pretrial deadlines. Doc. 200 at 2.

On June 10, 2010, Plaintiff filed the instant motion requesting a similar extension of time, or in the alternative, permission to take multiple depositions out of time. Doc. 201 at 5. Plaintiff also seeks reconsideration of the order denying the extension of the pretrial deadlines. Doc. 201 at 5. Plaintiff also seeks a hearing. Doc. 201 at 1.


Unlike Rule 15(a)’s more liberal standard allowing amendment of a complaint, Rule 16(b)’s “good cause” standard emphasizes diligence of the party seeking modification of the pretrial order. See, e.g., O’Connell v. Hyatt Hotels, 357 F.3d 152, 154-55 (1st Cir. 2004). Plaintiff suggests that the failure to meet the last discovery

deadline was due to circumstances beyond her control including six weeks spent working on a motion in another case and at least a month recovering from surgery. There were difficulties scheduling depositions, and seven depositions had to be cancelled because co-counsel for Defendants City of Rio Rancho, Tafoya and Camacho (Brian Judson) became ill and neither his co-counsel nor other members of his firm were able to replace him. Plaintiff maintains that he will suffer prejudice if he must respond to summary judgment motions without complete discovery, as well as be disadvantaged at trial.

This case has been pending for a long time with ample opportunity for discovery. Discovery was reopened several months ago. None of the parties moved to modify the scheduling order before the latest discovery deadline expired. This, despite their agreement to cancel six depositions (the parties scheduled “a marathon of depositions,” Doc. 201 at 2-3, the last week) and their awareness that two of the depositions could not be scheduled before the deadline. The motion should be denied.

IT IS SO ORDERED.

DATED this 14th day of June 2010, at Santa Fe, New Mexico.


United States Circuit Judge
Sitting by Designation